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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,972	02/10/2004	Robert A. Henderson	210121.455C21	1812

500 7590 11/18/2005

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 6300
SEATTLE, WA 98104-7092

EXAMINER

YAO, LEI

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,972

Applicant(s)

HENDERSON ET AL.

Examiner

Lei Yao, Ph.D.

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/4/05, 9/10/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>exhibit A</u> . |

Art Unit: 1642

DETAILED ACTION

Election/Restrictions

Applicant's election of group III (claim 8) in the reply filed on 4/28/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Information Disclosure Statement

The information disclosure statement (s) (IDS) submitted on 9/10/04 and 5/4/05 are/is considered by the examiner and initialed copies of the PTO-1449s are enclosed.

Priority

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

Acknowledgement is made of applicant's claims to an earlier effective filing date through US non-provisional application, 09285479 ('479) filed 4/2/1999. Claim 8 of instant application is drawn to a method for stimulating an immune response in a patient, comprising administering to the patient a composition of antibody that specifically bind to a the polypeptide of SEQ ID NO: 161. Upon review of specification of the applications, it is noted that the '479 application does not provide adequate written description of administering a patient of composition comprising an antibody for SEQ ID NO: 161. Therefore, the claim 8 will have a priority date of 12/17/1999.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1642

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 8 is rejected under 35 U.S.C. 102(e) as being anticipated by Holroyd et al., (US Patent 6576434), or Pauli et al., (US Patent, 6309857) as evidenced by Abbas et al., (page 393, column 2, section antibodies, Cellular and Molecular Immunology, 4th edition, Published by W.B. Saunders Company, 2000).

Holroyd et al., disclose a pharmaceutical composition comprising an antibody to a protein, ICACC, which is 99.6% identical to the protein having amino acid sequence SEQ ID NO: 161 as evidenced by protein sequence search (see Exhibit A). Holroyd et al., disclose a method of administering antagonists of ICACC comprising antibody for the protein to treat a disease through induction of immune response in a individual (col 17, line 56-60, col 19, line 36-40, line 60-67 and col 20, line 1-5).

Pauli et al., disclose a pharmaceutical composition comprising an antibody to a protein specifically expressed in lung, which is 99.7% identical to the protein having amino acid sequence of SEQ ID NO: 161 as evidenced by protein sequence search (see Exhibit B). Pauli et al., disclose a method of administering to a patient a therapeutically effective amount of the composition comprising an antibody to prevent lung-metastatic tumor spreading (col 21-22, example 9).

Treating cancer with an antibody to a protein responsible for a tumor development is a widely used method in the art. It is well known that administration of any foreign substance including a polypeptide antibody for treating tumor will inherently stimulate an immune response that also includes killing tumor cells by activating complement or by antibody-dependent cell-mediated cytotoxicity, in which Fc receptor-bearing macrophage or NK cells mediated the killing (Abbas et al., page 393, column 2, section).

Art Unit: 1642

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lei Yao, Ph.D. whose telephone number is 571-272-3112. The examiner can normally be reached on 8am-4.30pm Monday to Friday.

Any inquiry of a general nature, matching or file papers or relating to the status of this application or proceeding should be directed to Kim Downing for Art Unit 1642 whose telephone number is 571-272-0521

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lei Yao, Ph.D.
Examiner
Art Unit 1642

LY


SHEELA HUFF
PRIMARY EXAMINER

TITLE OF INVENTION: Nucleotide Sequences Encoding Mammalian Calcium
; TITLE OF INVENTION: Activated Chloride Channel-Adhesion Molecules
; FILE REFERENCE: 18617.0058
; CURRENT APPLICATION NUMBER: US/10/055,412B
; CURRENT FILING DATE: 2001-10-29
; PRIOR APPLICATION NUMBER: US/09/193,562
; PRIOR FILING DATE: 1998-11-17
; PRIOR APPLICATION NUMBER: US/60/065,922
; PRIOR FILING DATE: 1997-11-17
; NUMBER OF SEQ ID NOS: 47
; SEQ ID NO 32
; LENGTH: 943
; TYPE: PRT
; ORGANISM: Homo sapiens
US-10-055-412B-32

Query Match 99.7%; Score 4926; DB 4; Length 943;
Best Local Similarity 99.6%; Pred. No. 0;
Matches 939; Conservative 2; Mismatches 2; Indels 0; Gaps 0;
QY 1 MTQSIAGPICNLKFTVLLVALSSELPFLGAGVQLQDNGYNGLLIAINPQVFNQNLISN 60
DB 1 MTQSIAGPICNLKFTVLLVALSSELPFLGAGVQLQDNGYNGLLIAINPQVFNQNLISN 60
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DB 61 IKEMITEASFYLFNATKRVFRNFKILIPATWKANNNSKIKQESYEKANVITVDWYGAH 120
QY 121 GDDPYTLQYRGCGKGGKGIHFTPNFLNDNLNLTAGYSGRGRVFWHWAHLRWGVFDEYNND 180
DB 121 GDDPYTLQYRGCGKGGKGIHFTPNFLNDNLNLTAGYSGRGRVFWHWAHLRWGVFDEYNND 180
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DB 181 KPFIYNGQNIKVTCCSDITGIFVCEKGPCPOENCIIISKLKFGCTFIYNSTQNTASI 240
QY 241 MFQSLSSVVEFCNASTHNOEAPNLQNMCSLSAMDVIITDSADFHSPFMNGTELPPPP 300
DB 241 MFQSLSSVVEFCNASTHNOEAPNLQNMCSLSAMDVIITDSADFHSPFMNGTELPPPP 300
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DB 301 TFSLVAGDKVCLVLDVSSKMAEADRLLOQAABFYLQIIVEIHTFVGIAFSDSGKEI 360
QY 361 RAQLHQLNSNDRKLLVSLPTTVSAKTIDISGLKGFVEVEKNGKAYGSMILVTS 420
DB 361 RAQLHQLNSNDRKLLVSLPTTVSAKTIDISGLKGFVEVEKNGKAYGSMILVTS 420
QY 421 GDDKLLGNCLPTVLSGGSTHISIALGSSAAPNLBELSLTGCLKFFVDPDISNSMIDAF 480
DB 421 GDDKLLGNCLPTVLSGGSTHISIALGSSAAPNLBELSLTGCLKFFVDPDISNSMIDAF 480
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DB 481 SRISSGTGDIPOQHIOLESTGENVKPHQLKNTVTDVNTVNDTMTLVTAQSGPPEIL 540
QY 541 FDPDERKYTNNTFTNLFTRTASLWIPGAKPGHWTYTLNTHSHLOALKVTVTSRASN 600
DB 541 FDPDERKYTNNTFTNLFTRTASLWIPGAKPGHWTYTLNTHSHLOALKVTVTSRASN 600
QY 601 AVPPATVEAFVERDSLHPHPVMIYANVKQGFVPIINATVATVETGDPVTLRLDDG 660
DB 601 AVPPATVEAFVERDSLHPHPVMIYANVKQGFVPIINATVATVETGDPVTLRLDDG 660
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DB 661 AGADVTKNDGIYSRYEFPFAANGRYSLKVVHNSPSISTPAHSIPGSHAMVPGYTANG 720
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QY 781 LTLSTWAPGEDFDQOQATSYEIRMSKSLQNIODDFNAILVNTSKRNPOQAGIREIFTS 840

RESULT 12

US-09-623-624-4
; Sequence 4, Application US/09623624
; Patent No. 6576434
; GENERAL INFORMATION:
; APPLICANT: Magainin Pharmaceuticals, Inc.
; TITLE OF INVENTION: Asthma-Associated Factors as Targets for Treating
; TITLE OF INVENTION: Atopic Allergies, Including Asthma and Related
; TITLE OF INVENTION: Disorders
; FILE REFERENCE: 36870-5073-WO
; CURRENT APPLICATION NUMBER: US/09/623,624
; CURRENT FILING DATE: 2000-09-06
; PRIOR APPLICATION NUMBER: PCT/US99/04703
; PRIOR FILING DATE: 1999-03-03
; PRIOR APPLICATION NUMBER: US 08/697,360
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/697,419
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/697,440
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/697,471
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/697,471
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/697,472
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/697,473
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/702,105
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/702,110
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/702,168
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/980,872
; PRIOR FILING DATE: 1997-12-01
; NUMBER OF SEQ ID NOS: 18
; SOFTWARE: Patentin Ver. 2.0
; SEQ ID NO 4
; LENGTH: 943
; TYPE: PRT
; ORGANISM: Homo sapiens
US-09-623-624-4

Query Match 99.6%; Score 4921; DB 4; Length 943;
Best Local Similarity 99.6%; Pred. No. 0;
Matches 939; Conservative 2; Mismatches 2; Indels 0; Gaps 0;
QY 1 MTQSIAGPICNLKFTVLLVALSSELPFLGAGVQLQDNGYNGLLIAINPQVFNQNLISN 60
DB 1 MTQSIAGPICNLKFTVLLVALSSELPFLGAGVQLQDNGYNGLLIAINPQVFNQNLISN 60
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DB 61 IKEMITEASFYLFNATKRVFRNFKILIPATWKANNNSKIKQESYEKANVITVDWYGAH 120
QY 121 GDDPYTLQYRGCGKGGKGIHFTPNFLNDNLNLTAGYSGRGRVFWHWAHLRWGVFDEYNND 180
DB 121 GDDPYTLQYRGCGKGGKGIHFTPNFLNDNLNLTAGYSGRGRVFWHWAHLRWGVFDEYNND 180
QY 181 KPFIYNGQNIKVTCCSDITGIFVCEKGPCPOENCIIISKLKFGCTFIYNSTQNTASI 240

Exhibit A

181 KPFYINGONQIKVTRCSSDITGIFVCEKGPCQENCIIISKLKFGCTFIYNSQTASATSI 240
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301 TFSLVAGDKVCLVLDVSSKMAEADRLQLQAAEFYLMQIVIEHTFVGIASFDSKGEI 360
361 RAQLHQINSNDRLKLVSLPTTVSAKTDISICSLKKGFEVVEKLGKAYGSMVLVTS 420
361 RAQLHQINSNDRLKLVSLPTTVSAKTDISICSLKKGFEVVEKLGKAYGSMVLVTS 420
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481 SRISSTGDI FQOHIQLESTGENVKPHQKNTVTDNTVGNDFMLVTVQASGPPETIL 540
541 FDPGRKYTNNTFNLTFTASLWIPGTAKPGHWTYTLNTHHSIQALKVTVTSRASN 600
541 FDPGRKYTNNTFNLTFTASLWIPGTAKPGHWTYTLNTHHSIQALKVTVTSRASN 600
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901 LILKGVLTAMGLIGIICLIIVVTHTLRKRKADKKGTKILL 943
901 LILKGVLTAMGLIGIICLIIVVTHTLRKRKADKKGTKILL 943

RESULT 13
US-10-270-595-4
; Sequence 4, Application US/10270595
; Patent No. 6716603
; GENERAL INFORMATION:
; APPLICANT: Magainin Pharmaceuticals, Inc.
; TITLE OF INVENTION: Asthma-Associated Factors as Targets for Treating
; TITLE OF INVENTION: Atopic Allergies, Including Asthma and Related
; TITLE OF INVENTION: Disordered
; FILE REFERENCE: 36870-5073-NO
; CURRENT APPLICATION NUMBER: US/10/270,595
; CURRENT FILING DATE: 2002-10-16
; PRIOR APPLICATION NUMBER: US/09/623,624
; PRIOR FILING DATE: 2000-09-06
; PRIOR APPLICATION NUMBER: PCT/US99/04703
; PRIOR FILING DATE: 1999-03-03
; PRIOR APPLICATION NUMBER: US 08/697,360
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/697,419
; PRIOR FILING DATE: 1996-08-23
; PRIOR APPLICATION NUMBER: US 08/697,440

PRIOR FILING DATE: 1996-08-23
PRIOR APPLICATION NUMBER: US 08/697,471
PRIOR FILING DATE: 1996-08-23
PRIOR APPLICATION NUMBER: US 08/697,471
PRIOR FILING DATE: 1996-08-23
PRIOR APPLICATION NUMBER: US 08/697,472
PRIOR FILING DATE: 1996-08-23
PRIOR APPLICATION NUMBER: US 08/697,473
PRIOR FILING DATE: 1996-08-23
PRIOR APPLICATION NUMBER: US 08/702,105
Remaining Prior Application data removed - See File Wrapper or PALM.
NUMBER OF SEQ ID NOS: 16
SOFTWARE: PatentIn Ver. 2.0
SEQ ID NO 4
LENGTH: 943
TYPE: PRT
ORGANISM: Homo sapiens
US-10-270-595-4
Query Match 99.6%; Score 4921; DB 4; Length 943;
Best Local Similarity 99.6%; Pred. No. 0;
Matches: 939; Conservative 2; Mismatches 2; Indels 0; Gaps 0;
QY 1 MTORSIAGPICNLKFPVTLVLSSELPPFLGAGVQLQDNGYNGLLIAINPQWPNQNLISN 60
DB 1 MTORSIAGPICNLKFPVTLVLSSELPPFLGAGVQLQDNGYNGLLIAINPQWPNQNLISN 60
QY 61 IKEMITEASFYLFNATKRVFRNFKILIPATWKANNNSKIKOESYEKANVITVDWYGAH 120
DB 61 IKEMITEASFYLFNATKRVFRNFKILIPATWKANNNSKIKOESYEKANVITVDWYGAH 120
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DB 121 GDDPYTLOYRCGCKGKGIYHFTPNFLNDNLTAGYSGRGRVFWHWAHLRGMVDFEYND 180
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DB 181 KPFYINGONQIKVTRCSSDITGIFVCEKGPCQENCIIISKLKFGCTFIYNSQTASATSI 240
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DB 241 MFMSLSSVVEPCNASTHNOEAPNLQNCMSLRSAWDVITDSADPHSPMGTELPPPP 300
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DB 301 TFSLVAGDKVCLVLDVSSKMAEADRLQLQAAEFYLMQIVIEHTFVGIASFDSKGEI 360
QY 361 RAQLHQINSNDRLKLVSLPTTVSAKTDISICSLKKGFEVVEKLGKAYGSMVLVTS 420
DB 361 RAQLHQINSNDRLKLVSLPTTVSAKTDISICSLKKGFEVVEKLGKAYGSMVLVTS 420
QY 421 GDDKLLGNCLPTVLSGSGTHSIALGSSAAPNLELSRLTGLKFPVDPISNSMIDAF 480
DB 421 GDDKLLGNCLPTVLSGSGTHSIALGSSAAPNLELSRLTGLKFPVDPISNSMIDAF 480
QY 481 SRISSTGDI FQOHIQLESTGENVKPHQKNTVTDNTVGNDFMLVTVQASGPPETIL 540
DB 481 SRISSTGDI FQOHIQLESTGENVKPHQKNTVTDNTVGNDFMLVTVQASGPPETIL 540
QY 541 FDPGRKYTNNTFNLTFTASLWIPGTAKPGHWTYTLNTHHSIQALKVTVTSRASN 600
DB 541 FDPGRKYTNNTFNLTFTASLWIPGTAKPGHWTYTLNTHHSIQALKVTVTSRASN 600
QY 601 AVPPATVEAFVERDSLHFPVPMIYANVKQGPPIILNATVTVPEGDPVTLRLDDG 660
DB 601 AVPPATVEAFVERDSLHFPVPMIYANVKQGPPIILNATVTVPEGDPVTLRLDDG 660
QY 661 AGADVIKNDGIYSRYFFFAANGRYSLKVHVNHSPISTPAHSIPGSHAMVPGYTANG 720
DB 661 AGADVIKNDGIYSRYFFFAANGRYSLKVHVNHSPISTPAHSIPGSHAMVPGYTANG 720
QY 721 IQMNA PRKSVGRNEERKMGFSRVSSGGSFVILGVPAGHPDPVPPCKIIDLEAVKVEE 780